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TO: TEMPORARY COCHAIRPERSONS SEYMOUR AND GRANZOW AND MEMBERS OF THE ADOPTION SUBSIDY PROGRAM STUDY COMMITTEE

FROM: JOHN POLLAK, COMMITTEE SERVICES ADMINISTRATOR
AT 515/281-3818

RE: Background Information

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Overview. This memorandum provides background information concerning the adoption subsidy provided to parents who adopt a special needs child. The memorandum addresses the history and legal basis of the program nationally and in Iowa. Included with the memorandum are articles and other documents that provide comparative information on how other states provide this assistance. In addition, other attachments were provided by Iowa experts on adoption to explain the program.

Attachments:

Attachment I. "Special Needs Adoptions: How States Define Special Needs," Practice Brief published by the National Resource Center for Special Needs Adoption, Service of the Children's Bureau of the United States Department of Health and Human Services [<http://www.nrcadoption.org/resources/emerger.htm>].

Attachment II. "Appendix: State Criteria for Defining Special Needs." This is an appendix to the Attachment I publication.

Other background information. Additional background information accompanying this memorandum includes the following:

- Issue Review prepared by Lisa Burk, Fiscal Services Division, Legislative Services Agency.
- Department of Human Services submission.
- Iowa Foster and Adoptive Parent Association submission.

Interim Study Authorization. The Legislative Council was requested to establish the study for the 2004 Interim in language included in the Fiscal Year 2004-2005 appropriations for the Department of Human Services (2004 Iowa Acts, Senate File 2298, Section 139 (5)). In addition, the Child and Family Policy Center in

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Des Moines sent information to the Legislative Council in support of the request contained in the legislation.

The Legislative Council created the Adoption Subsidy Program Study Committee, authorized it to meet for one day, and provided the following charge: "Review the adoption subsidy program administered by the Department of Human Services."

History – Federal Law. Adoption assistance for special needs children was initiated as part of the federal Adoption Assistance and Child Welfare Act of 1980ⁱ. This legislation also established the federal program for providing financial support to states for the maintenance costs of children that had been removed from their family and placed in foster care. Both programs are provided under Title IV-E of the federal Social Security Act. The adoption program is intended to assist with adoptions for children who cannot or should not be returned to their family. The primary federal law providing for the assistance is codified in 42 USC 673.ⁱⁱ

The federal law requires state provisions for providing the assistance to be outlined in a state plan, establishes basic criteria for identifying a special needs child, and prohibits payments once the child becomes 18 unless the child has a physical or mental handicap warranting further assistance until the child attains age 21.

Adoption Assistance. Iowa Code section 234.6 provides general authority to the Department of Human Services (DHS) administrator for children and family programs to administer child welfare programs. According to the departmental rules for adoption assistance in 441 IAC 157, these are the services provided in Iowaⁱⁱⁱ:

adoptive home study, preparation of child, preparation of family, preplacement visits, placement services and postplacement services. The decision as to whether to purchase adoption services is based on the availability of funding, the availability of department staff to provide adoption services to individuals and families, and the needs of the special needs child or children

Iowa Adoption Subsidy Statute. Iowa Code sections 600.17-600.22 provide Iowa's statutory basis for subsidized adoptions under DHS. Here is a summary of the provisions:

Within the limits of funds appropriated to DHS and any gifts or grants received by DHS for this purpose, DHS is required to provide financial assistance to any person who adopts a child with physical or mental disabilities or an older or otherwise hard-to-place child, if the adoptive parent has the capability of providing a suitable home for the child but the need for special services or the costs of maintenance are beyond the economic resources of the adoptive parent.

DHS cannot provide financial assistance if the special services are available free of cost to the adoptive parent or are covered by an insurance policy of the adoptive parent. "Special services" means any medical, dental, therapeutic, educational, or other similar service or appliance required by an adopted child by reason of a mental or physical disability.^{iv}

The statute authorizes a prospective adoptive parent to state the desire for subsidy assistance in the adoption petition and requires the department to investigate and file a statement with the court as to whether the assistance would be provided along with estimates of the cost, amount, extent, and duration of the assistance^v. The department is also required to determine whether or not insurance coverage exists to pay for the subsidy.

The amount of financial assistance for maintenance is limited to the amount the department would normally spend for foster care of the child and financial assistance for special services is limited to the amount the department would normally spend if it were to provide these services.^{vi}

Adoption subsidy is available only if the child to be adopted was under the guardianship of the state, county, or a licensed child-placing agency immediately prior to adoption. A statutory requirement for a 180-day period of residence in the proposed home does not apply to a subsidized adoption.^{vii}

Adoption subsidy terminates when the need for assistance no longer exists and cannot extend beyond the adopted child's 21st birthday.^{viii}

2004 Session Change. During the winter of 2004 there was significant discussion among legislators concerning the Adoption Subsidy Program. The debate began when DHS proposed rule changes to revise various components of the subsidy program. DHS cited a need to control costs and to ensure incentives are being provided appropriately. Concerns were raised about the proposed changes by adoptive parents and child advocates. These included a concern that changing the program would be unfair to those who adopted a child with the understanding that certain benefits would be provided and a concern that reducing the benefit package would make adoption of a special needs child less attractive to prospective adoptive parents.

After much discussion, implementation of the rules was delayed until the end of the 2004 Legislative Session by action of the Administrative Rules Review Committee taken on March 8, 2004. After more debate among legislators, the following language was included in the Fiscal Year 2004-2005 appropriations made to DHS in 2004 Iowa Acts, Senate File 2298:

"Sec. 139. ADOPTION SUBSIDY PROGRAM.

1. a. It is the intent of the general assembly that the department of human services maximize receipt of the federal funding available for the adoption subsidy program. The department may renegotiate existing adoption agreements solely for the purpose of maximizing federal funding. However, any revision of the existing adoption monthly maintenance payment agreement shall not result in the reduction of benefits to these adoptive families.

b. The limitation on attorney fees under the program shall be \$500 per recipient.

c. The department of human services shall attempt to develop a method to obtain federal matching funds for adoption subsidy program recipients' out-of-pocket payments to attorneys for the portion of attorney fees that exceed the limitation on attorney fees under the program.

d. The department of human services shall attempt to obtain federal matching funds for adoption subsidy program recipients' out-of-pocket payments for child care fees that exceed the applicable reimbursement rate established under the child care assistance program.

e. If cost-effective and in compliance with federal law and regulation, the department of human services may implement a sliding benefit scale based upon income, for all or a portion of the adoption presubsidy or preadoptive subsidy agreements entered into on or after July 1, 2004.

2. It is the intent of the general assembly that beginning July 1, 2004, adoption subsidy agreements entered into on or after that date shall be administered uniformly throughout the state.

3. a. Beginning July 1, 2004, the child care subsidy payments for individuals who enter into presubsidy or preadoptive subsidy agreements shall be governed by the provisions of the department of human services' child care assistance programs.

b. (1) Individuals who entered into presubsidy or preadoptive subsidy agreements on or before June 30, 2004, shall continue to receive a child care subsidy, notwithstanding any income guidelines specified under the child care assistance program, and shall not be required to meet the specifications of a specialized program as specified in the administrative rules, but beginning July 1, 2004, the child care subsidy rate shall be governed by the rate ceilings under the department of human services' child care assistance program.

(2) The department shall notify these individuals within thirty days of the effective date of this section of this Act of the potential change in the determination of the child care subsidy rate described under this subsection, and the process for requesting an exception to policy.

(3) If an individual requests an exception to policy and the exception is approved, the individual shall continue to receive the child care subsidy rate in effect for the individual prior to July 1, 2004, and shall be reimbursed the difference between the prior rate and the new rate for the period of time that the new rate was applied.

4. It is the intent of the general assembly that any rules relating to the adoption subsidy program for which the effective date of the rules is delayed pursuant to section 17A.8, subsection 9, shall take effect unless legislation enacted by the general assembly conflicts with such rules.

5. The legislative council is requested to establish an interim study committee to review the adoption subsidy program, which includes a review of current practices regarding the determination of subsidy levels, disparities in subsidy levels among regions of the state, program cost and benefits, the fiscal and programmatic impact of projected future program growth, a thorough analysis of the demographic factors of the adoptive families as well as the adoptive children's special needs, and quantification of savings in other programs and services resulting from the utilization of the adoption subsidy program. The interim study committee shall seek input from the department of human services, adoptive parents, and others with experience or expertise relating to the adoption subsidy program and related services and supports. The interim study committee shall submit a report of findings and recommendations to the general assembly not later than December 1, 2004."

Iowa Adoption Subsidy Rules. By law, DHS is required to adopt rules to administer the Adoption Subsidy Program.^{ix} These rules are in the Iowa Administrative Code at 441 IAC 201. Following passage of the language in SF 2298, DHS revised the rules effective in July 2004 to reflect that language and the rules committee did not object to the revised rules.

Special Needs Child. Under the revised rules, a special needs child is a child who DHS or a private agency has been unable to place in an adoptive home without a subsidy and is described by any of the following^x:

- a. The child has a medically diagnosed disability which substantially limits one or more major life activities, requires professional treatment, assistance in self-care, or the purchase of special equipment.
- b. The child has been determined to be mentally retarded by a qualified mental retardation professional.
- c. The child has been diagnosed by a qualified mental health professional to have a psychiatric condition which impairs the child's mental, intellectual, or social functioning, and for which the child requires professional services.
- d. The child has been diagnosed by a qualified mental health professional to have a behavioral or emotional disorder characterized by situationally inappropriate behavior which deviates substantially from behavior appropriate to the child's age or significantly interferes with the child's intellectual, social, and personal adjustment.
- e. The child is aged eight or over and Caucasian.
- f. The child is aged two or older and is a member of a minority race or ethnic group or the child's biological parents are of different races.
- g. The child is a member of a sibling group of three or more who are placed in the same adoptive home.

Types of Subsidy. The subsidy program has three general components that each have various documentation, last alternative, and payment requirements:

- a. **Maintenance^{xi}**. A monthly payment to assist with room, board, clothing, and spending money may be provided, as determined in accordance with rules. The child is also eligible for Medicaid.
- b. **Special Care Maintenance Payment or Allowance^{xii}**. If a foster parent provides care to a special needs child, the foster family is paid the basic maintenance rate plus either a payment of \$4.94 or an allowance of \$14.80 per day for extra expenses associated with the child's special needs. If such payment or allowance was made for a child in family foster care or the child was eligible for it while in group foster care, up to that maximum amount may be authorized if the child is adopted. These are children with physical, mental, or emotional problems. The table below shows the maximum rates that may be negotiated, depending upon the age of the child.
- c. **Special Services Subsidy^{xiii}**. The need for this subsidy is established from the child's record with the public or private agency that had guardianship of the child as substantiated by specialists. The subsidy may be paid as a reimbursement to the family or as a payment to a provider. The subsidy covers expenses related to the adoption of the child or attributable to the child's special needs. These expenses may include preplacement supplies and equipment, adoption attorney fees and court costs, additional health insurance premiums, counseling or therapy, and medical expenses.

Maintenance and Special Care Maintenance Payment and Allowance Chart^{xiv}. The DHS worker negotiates a daily maintenance rate with the family, based upon the needs of the child. The agreed upon rate is adjusted for any unearned income of the child such as Social

Security, veteran's benefits, etc. The following table lists the maximum basic daily rate that can be negotiated, varying depending on the age of the child.

AGE OF CHILD	MAXIMUM BASIC DAILY RATE	MAXIMUM MAINTENANCE PLUS UP TO \$4.94 SPECIAL CARE MAINTENANCE PAYMENT PER DAY	MAXIMUM MAINTENANCE PLUS UP TO \$14.80 PER DAY SPECIAL CARE MAINTENANCE ALLOWANCE
0-5 Years	\$14.28	\$19.22	\$29.08
6-11 years	15.07	20.01	29.87
12-15 years	16.83	21.77	31.63
16-20 years	16.83	21.77	31.63

ⁱ Pub. L. No. 96-272.

ⁱⁱ http://assembler.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00000673----000-.html.

ⁱⁱⁱ 42 IAC 157.3.

^{iv} Iowa Code section 600.17.

^v Iowa Code section 600.18.

^{vi} Iowa Code section 600.19.

^{vii} Iowa Code section 600.20.

^{viii} Iowa Code section 600.21.

^{ix} Iowa Code section 600.22.

^x 441 IAC 201.3 (1).

^{xi} 441 IAC 201.6(2).

^{xii} 441 IAC 201.5(9) and Department of Human Services Employee Manual Title 13 – Social Service Resources, chapter C(1) – Adoption Subsidy, Special Care Maintenance Allowance," pp. 20-21.

^{xiii} 441 IAC 201.6(1) and Department of Human Services Employee Manual Title 13 – Social Service Resources, chapter C(1) – Adoption Subsidy, Special Services Subsidy," pp. 22-23.

^{xiv} Department of Human Services Employee Manual Title 13 – Social Service Resources, chapter C(1) – Adoption Subsidy, Special Care Maintenance Allowance."

3498ic

Special Needs Adoptions: How States Define Special Needs

There are 126,000 children nationwide in foster care who are waiting to be adopted, and about 88% of them will be considered “special needs” for purposes of assistance payments, or subsidies, after they are adopted (U.S. Department of Health and Human Services, 2001). This brief looks at how states determine which children are considered to have special needs.

Title IV-E of the Social Security Act contains the Federal definition of special needs, which is that

- (1) the child cannot or should not be reunified with his/her parents;
- (2) the child has a “specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps)” that would make adoption impossible without adoption assistance; and
- (3) reasonable efforts have been made to place the child with adoptive parents without providing such assistance, unless “it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child.” (Sec. 473 [42 U.S.C. 673](c)).

States have discretion in defining those “specific factors or conditions” they believe make adoption difficult, and there is considerable variation from state to state.

Ethnic Background or Membership in a Minority Group

Despite the fact that children who are members of racial or ethnic minorities make up only about 32% of the general population age 18 and under, they represent more than 66% of children waiting to be adopted. In fiscal year 2001 62% of children adopted from foster care were children of color. African-American children in particular are over-represented in the population of children waiting for adoption, and under-represented among those who have been adopted.

Nine states make no mention of race, ethnicity, or minority status in their definitions of special needs. One state considers “minority background,” but only if that, in addition to other special needs, would prevent adoption without a subsidy.

The remaining 40 states and the District of Columbia all identify some type of minority status in their special needs definitions, although the vast majority (31) do not specify any racial/ethnic groups in particular. Ten states consider race or minority status in combination with the age of the child, which varies from age one to age eight.

Five states specifically mention only Black or African-American children. In three of these states, the child must also be of a certain age (age one in Georgia, age two in Alabama and Kentucky). One state, Oklahoma, specifies “Indian, Hispanic, Oriental, and African-American children age three years or older.” Only one other state, Oregon, lists other

minorities (African American, Hispanic, Asian, Indian, Pacific Islander), although this does not appear to be exclusive of other groups.

Two states (California and New Hampshire) list language as a special need, and one (South Dakota) includes religion.

In 1998, 12% of all special needs adoptions listed racial origin/background as the basis for determining the child's eligibility for a subsidy. However, this varied considerably by state, from none in seven states to 51% in Alabama (U.S. House of Representatives, 2000).

Age

Of the 126,000 children in foster care waiting to be adopted, very few are the infants and toddlers that many potential adoptive parents express an interest in – only 3% are under age one, and 32% are ages one to five. Nevertheless, almost half of the 50,000 adoptions that were finalized in fiscal year 2001 were of children under the age of 6.

In recognition of the fact that it is more difficult to find adoptive homes for older waiting children, all but two states list age in their definitions of special needs. Nine states do not specify any particular age; the others vary, including children from as young as age 1 to as much as age 12. A few consider race and/or sex and age together, generally listing a younger age for minority children or for boys.

Age is the most common basis for determining special needs status; in 1998 the child's age was given as the basis in 31% of all special needs adoptions. Again, there was great variation, from none in two states to 92% in Illinois (U.S. House of Representatives, 2000).

Membership in a Sibling Group

In recognition of the special difficulty of placing more than one child at a time in an adoptive home, every state and the District of Columbia includes membership in a sibling group as a special need. Over half (33) of the states do not specify the size. Another 13 states include groups of as few as two children, if at least one of the children has some other special need or if at least one of the children is a minimum age ranging from 15 months to 8 years old.

Thirteen states place all sibling groups of three or more children in the special needs category, and one includes some groups of three, depending on race, age, and other special needs of the children. The only state that limits special needs status to groups of four or more is South Carolina, and that is only for Caucasian children when all the children are under age six and none has other special needs. Illinois makes a provision for a child being adopted by parents who previously adopted, with assistance, another child of the same mother or father.

Of all special needs adoptions in 1988, sibling group status was reported as the basis in 20% of cases, but ranging from none in three states to nearly 60% in Hawaii and Oregon (U.S. House of Representatives, 2000).

Medical, Physical, Mental or Emotional Handicap

These are the conditions many people might think of first when a child is identified as “special needs.” Every state provides special needs status for children with various physical, medical, mental, emotional or behavioral disorders. In addition, 27 states include children who are at high risk of developing problems as a result of abuse or neglect, prenatal exposure to drugs or alcohol, hereditary factors, or other factors. The inclusion of this “high risk” category allows states to negotiate deferred subsidy agreements that will only result in payments if the child subsequently develops a problem. States find that this option can encourage the adoption of children who seem healthy but may have potential risks, and contributes to a lower disruption or adoption failure rate. For families, this provides a safety net and contributes to a better relationship with the agency (North American Council on Adoptable Children, n.d.)

In fiscal year 1998, only 21% of all special needs adoptions were on the basis of such conditions. Two states reported no instances of special needs determinations on the basis of disabilities or handicaps; at the other end of the scale Indiana used this as a basis for all its special needs adoptions (U.S. House of Representatives, 2000).

“Other”

Nineteen states list additional factors that can be considered in making a special needs determination. These include:

- significant emotional ties with foster parents (six states; one additional state requires that the child has been in placement 18 months or more and one state limits this provision to children age seven and up);
- risk of emotional disturbance if removed from the care of foster parents or relatives (three states);
- parents unable or unwilling to adopt without assistance, and the state has conducted a search for other adoptive parents (seven states);
- previous disruption and/or multiple placements (three states);
- in custody for more than one year with a permanent plan of adoption, but not being placed for adoption (one state); and
- placed with a relative who provides kinship care and meets a required degree of relationship (one state).

In fiscal year 1998, 14 states reported no special needs adoption with any of these other factors as a determinant. The remaining states reported from less than 1% to 59% of their special needs adoptions in this category.

Who Adopts Children with Special Needs?

In fiscal year 2001, over 44,000 children were adopted from the public child welfare system with the assistance of adoption subsidies. Almost 60% of the 50,000 children adopted that year were adopted by their foster parents, and another 23% by relatives.

State Profiles

See the Appendix for a list of criteria used by each state in defining “special needs.”

Information about state special needs adoption determinations is from the North American Council on Adoptable Children State Subsidy Profiles, available online at http://www.nacac.org/subsidy_stateprofiles.html

References

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Appendix

State Criteria for Defining Special Needs

- Alabama:
- physical or mental disability;
 - emotional disturbance;
 - recognized high risk of physical or mental disease;
 - children eight years old and older;
 - sibling groups of three or more children; and
 - a Black child two years old or older.
- Alaska:
- physical or mental disability;
 - emotional disturbance;
 - recognized high risk of physical or mental disease;
 - age;
 - membership in a sibling group;
 - racial or ethnic factors; or
 - any combination of these conditions.
- Arizona:
- physical, mental, or developmental disability;
 - emotional disturbance;
 - high risk of physical or mental disease;
 - high risk of developmental disability;
 - age of six or more years at the time of application for subsidy;
 - sibling relationship;
 - racial or ethnic factors;
 - high risk of severe emotional disturbance if removed from the care of relatives or foster parents; or
 - any combination of the special needs described here.
- Arkansas
- severe medical or psychological needs that require ongoing rehabilitation or treatment;
 - healthy, Caucasian child who is nine years of age or older;
 - healthy child of color who is two years of age or older; or
 - member of a sibling group of two or more children being placed together;
- California:
- adoptive placement without financial assistance is unlikely because of
 - membership in a sibling group that should remain intact;
 - by virtue of race, ethnicity, color, language;
 - age of three years or older; or
 - parental background of a medical or behavioral nature that can be determined to adversely affect the development of the child; and/or
 - a mental, physical, emotional, or medical disability that has been certified by a licensed professional competent to make an assessment and operating within the scope of his or her profession.
- Colorado:
- physical disability, such as hearing, vision, or physical impairment, neurological conditions, disfiguring defects, and heart disease;
 - mental retardation, such as developmental delay or disability, perceptual or speech/language disability, or a metabolic disorder;
 - emotional disturbance;
 - hereditary factors that have been documented by a physician or psychologist;
 - high risk infants (such as those that are HIV positive or drug or alcohol exposed in utero);
 - other conditions that act as a serious barrier to the child's adoption. Conditions may include, but are not limited to,

- healthy child over age seven, or
 - sibling group that should remain intact.
- Connecticut:
 - over the age of one, and there are racial/ethnic barriers to adoption;
 - physical or mental disability or serious emotional maladjustment;
 - over the age of six;
 - member of a sibling group that includes two or more children who should be, or remain in, the same adoptive home; or
 - recognized high risk of physical or mental disability.
- Delaware:
 - Factors include, but are not limited to, the following:
 - age of the child (eight years or older);
 - membership in a minority race, or ethnic background;
 - membership in a sibling group to be adopted in the same placement;
 - mental or emotional conditions, verified by a psychologist, psychiatrist, or other qualified professional; or
 - medical condition, physical handicap, or disease which requires ongoing medical attention as verified by a physician
- District of Columbia:
 - physical, mental, or emotional handicapping condition;
 - two years of age or older;
 - developmentally delayed pre-school age child; or
 - member of a minority and/or birth assembled sibling group
- Florida:
 - has established significant emotional ties with his or her foster parents; or
 - not likely to be adopted because he or she is:
 - eight years of age or older;
 - mentally retarded;
 - physically or emotionally handicapped;
 - of black or racially mixed parentage; or
 - a member of a sibling group of any age
- Georgia:
 - any child eight years of age or older;
 - any child of Black heritage, one year of age or older;
 - members of a sibling group of three or more;
 - members of a sibling group of two where one is over the age of eight or has another special need; or
 - any child with documented physical, emotional, or mental problems or limitations
- Hawaii:
 - ethnic background;
 - age;
 - membership in a sibling group being adopted by the same family, not necessarily at the same time;
 - severe or chronic medical condition, physical, mental, or emotional disability; or
 - at high risk for a severe or chronic medical condition, physical, mental, or emotional disability
- Idaho:
 - physical, mental, emotional, or medical disability, or is at risk of developing such disability based on known information regarding the birth family and child's history;
 - age makes it difficult to find an adoptive home;
 - membership in a sibling group that must not be placed apart; or
 - establishment of such close emotional ties with a foster or relative family such that replacement is likely to be as traumatic to the child as removal from a biological family.
- Illinois:
 - irreversible or non-correctable physical, mental or emotional disability;
 - physical, mental or emotional disability correctable through surgery, treatment, or other specialized services;

- one year of age or older;
 - member of a sibling group being adopted together where at least one child meets one of the above criteria, or;
 - child being adopted by adoptive parents who have previously adopted, with adoption assistance, another child(ren) born of the same mother or father
- Indiana:
- two years of age or older;
 - member of a sibling group of two or more children of which at least one is two years of age or older and who will be placed with the sibling group in the same home;
 - medical condition or physical, mental, or emotional disability, or a recognized high risk of such condition or disability, as determined and documented by a physician licensed to practice in Indiana or another state or territory.
- Iowa:
- medically diagnosed disability which substantially limits one or more major life activities, or requires professional treatment, assistance in self-care, or the purchase of special equipment;
 - determined to be mentally retarded by a qualified mental retardation professional;
 - determined by a qualified mental health professional to be at high risk of having mental retardation, or having an emotional disability as determined by a qualified mental health professional, or having a physical disability as determined by a physician;
 - diagnosed by a qualified mental health professional to have a psychiatric condition which impairs the child's intellectual or social functioning;
 - diagnosed behavioral or emotional disorder characterized by situationally inappropriate behavior which deviates substantially from behavior appropriate to the child's age and interferes significantly with the child's intellectual, social, and personal adjustment;
 - age eight or over and Caucasian;
 - member of a minority race or ethnic group, or the child's biological parents are of different races;
 - member of a sibling group of three or more who are placed in the same adoptive home, or a sibling group of two if one of the children has special needs because of one of the above reasons.
- Kansas:
- Specific factors may include, but are not limited to:
- age: the child shall be 12 years of age or older if age is the only special needs factor or condition;
 - medical conditions or physical, mental, or emotional handicaps;
 - membership in a sibling group of two or more children adopted together, one of whom meets the special needs criteria. For sibling groups of two, at least one sibling must have another special needs condition. Sibling groups of three or more, being placed together, do not need to meet any other criteria; or
 - family/genetic history indicating that the child will need medical treatment or therapy at various developmental milestones (e.g., fetal alcohol syndrome, sexual abuse, mental retardation).
- Kentucky:
- physical or mental disability;
 - emotional or behavioral disorder;
 - recognized risk of physical, mental or emotional disorder;
 - member of a sibling group in which the siblings are placed together;
 - previous adoption disruption or multiple placements;
 - African American child two years old or older; or
 - age seven or older and has a significant emotional attachment or psychological

tie to his/her foster family and the Cabinet has determined that it would be in the child's best interest to remain with the family.

- Louisiana:
- white male, age 11 or older;
 - black male, infant or older;
 - white female, age 12 or older;
 - black female, age five or older;
 - ethnic background; (f) physical condition;
 - mental and/or emotional condition;
 - membership in a sibling group that should not be separated; or
 - high risk of developing future problems due to past and birth family history
- Provisions for exceptions to the definition of a "special needs" child may be made on a case-by-case basis.
- Maine:
- physical, mental, or emotional handicap that makes placement difficult;
 - medical condition which makes placement difficult;
 - member of a sibling group that includes at least one member who is hard to place;
 - difficult to place because of age or race;
 - has been a victim of physical, emotional, or sexual abuse or neglect that places the child at risk for future emotional difficulties; or
 - factors in the child's family background such as severe mental illness, substance abuse, prostitution, or genetic or medical conditions or illnesses that place the child at risk of future problems
- Maryland:
- six years old and over;
 - race or ethnic background, as follows:
 - membership in a minority race or ethnic group alone does not qualify for subsidy;
 - documentation in the child's records clearly indicate how the child's minority background, in addition to other special needs, prevented an adoptive placement without subsidy;
 - physical or mental disability or risk of it;
 - emotional disturbance;
 - membership in a sibling group; or
 - recognized high risk of physical or mental disease.
- Massachusetts:
- one or more special needs as a result of a mental, emotional, or physical impairment, behavioral disorder, or medical condition that has been diagnosed by a licensed professional who is qualified to make the diagnosis;
 - member of a sibling group of two to be adopted together and one of the children is eight years of age or older;
 - member of a sibling group of three or more to be adopted together;
 - member of an ethnic or cultural minority for whom reasonable, but unsuccessful, efforts to place the child in an adoptive home without subsidy were made and documented; or
 - child's birth and/or family history places the child at risk of having special needs but, due to the child's age, a reliable diagnosis cannot be made.
- Michigan:
- physical, mental, or emotional handicap or condition;
 - membership in a sibling group of two or more being placed together;
 - membership in a minority or ethnic group; or
 - age (age three or more)
- Minnesota:
- member of a sibling group to be placed as one unit where at least one sibling is older than 15 months of age;
 - documented physical, mental, emotional, or behavioral disabilities;
 - high risk of developing physical, mental, emotional, or behavioral disabilities.

- Mississippi:
- physical disability;
 - mental disability (IQ of 70 or less);
 - developmental disability;
 - emotional disturbance;
 - membership in a sibling group of two or more who are placed together;
 - age six or older;
 - racial or ethnic factors;
 - medical condition(s); or
 - history of abuse that puts a child at risk of having special needs.
- Missouri:
- five years of age or older;
 - minority racial or ethnic heritage;
 - intellectually, emotionally, or physically handicapped;
 - requires placement with siblings;
 - a condition (i.e., a state of health or behavior) which results in a guarded prognosis (although the child may appear normal) due to mental illness or retardation, drug usage by, or venereal disease of, the parents;
 - history which includes circumstances such as long alternative care, incest, or social or genetic complications in the family background which provide other impediments to adoption.
- All children who have been in the custody or are currently in the custody of the Division of Family Services (DFS) are considered to have special needs.
- Montana:
- diagnosed as having a physical, mental, or emotional disability;
 - recognized to be at high risk of developing a physical, mental or emotional disability;
 - member of a minority group;
 - six years of age or older; or
 - member of a sibling group to be placed together for adoption
- Nebraska:
- age (if age is the only special need, children age seven or younger generally are not considered eligible);
 - membership in a sibling group of three or more to be placed together;
 - strong attachment to foster/adoptive parents by whom the child is to be adopted, so that breaking the attachment would be harmful to the child; or
 - behavioral, emotional, physical, or mental handicap
- Nevada:
- six years of age or older if age is the only determining factor;
 - member of a sibling group of two or more to be placed together, and at least one of the children is age six years old;
 - diagnosed medical, physical, emotional, or mental disability or documented history of abuse/neglect which requires ongoing treatment; or
 - minority race or ethnic group and children of that group cannot be readily placed due to lack of placement resources
- New Hampshire:
- physical or mental handicap;
 - emotional disturbance;
 - age (if age is the sole factor to be used in determining the need for an adoption subsidy, the child must be six or older);
 - membership in a sibling group of two or more who need to be placed together;
 - language barrier; or
 - ethnic background, race, or color
- New Jersey:
- medical or dental condition which will require repeated or frequent hospitalization or treatment;
 - physical handicap, by reason of physical defect or deformity, whether congenital or acquired by accident, injury or disease, which makes or may be expected to make a child totally or partially incapacitated for education or for

- remunerative occupation;
- substantial disfigurement, such as the loss or deformation of facial features, torso, or extremities;
- diagnosed emotional or behavioral problem, psychiatric disorder, serious intellectual incapacity, or brain damage which seriously affects the child's ability to relate to his peers or authority figures, including but not limited to a developmental disability;
- one of a group of three or more siblings (including half-siblings) and it is considered necessary that the group be placed together, or the child is one of two siblings, one of whom meets the hard-to-place criteria;
- ten years old or older;
- over two years of age and a member of an ethnic group for whom adoptive homes are not readily available;
- over five years of age and has been living with foster parents for at least 12 months and adoption by the foster parents is the most appropriate plan for the child. A child in this situation under five may be deemed hard-to-place if he or she is a member of an ethnic group for whom adoptive homes are not readily available; or
- any other condition approved by the Director.

New Mexico:

- over age five;
- member of a minority ethnic race or background;
- part of a sibling group of three or more children; or
- moderate to severe developmental, psychological, or physical disabilities or handicaps manifested before age 18

New York:

Handicapped or hard to place:

- "handicapped:" specific physical, mental, or emotional condition or disability of such severity or kind which, in the opinion of the Office of Children and Family Services constitutes a significant obstacle to the child's adoption. Such conditions include, but are not limited to:
 - any medical or dental condition which will require repeated or frequent hospitalization, treatment or follow-up care;
 - any physical handicap, by reason of physical defect or deformity, whether congenital or acquired by accident, injury or disease, which makes or may be expected to make a child totally or partially incapacitated for education or for remunerative occupation;
 - any substantial disfigurement such as the loss or deformation of facial features, torso or extremities; or
 - a diagnosed personality or behavioral problem, psychiatric disorder, serious intellectual incapacity or brain damage which seriously affects the child's ability to relate to his or her peers and/or authority figures, including mental retardation or developmental disability.

The definition of "handicapped" is not all-inclusive.

- "hard-to-place:"
 - has not been placed for adoption within six months of the date his or her guardianship and custody were committed to the social services official;
 - has not been placed for adoption within six months from the date a previous adoption placement terminated;
 - meets any one of the following conditions:
 - one of a group of two siblings who are free for adoption, and it is considered necessary that the group be placed together, and at least one of the siblings is

- five years old or older, or
 - a member of a minority group, or
 - eligible for subsidy;
 - one of a group of three or more siblings and it is considered necessary that the group be placed together;
 - eight years old or older and is a member of a minority group;
 - ten years old or older; or
 - is hard-to-place with parents other than his or her present foster parents because he or she has been in care with the same foster parents for 18 months or more so that separation from them would adversely affect the child's development.
- North Carolina:
- a specific factor or condition (such as ethnic background, age, membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance or medical assistance. These factors include:
 - handicap: known and diagnosed medical, mental, or emotional conditions that will require periodic treatment or therapy of a medical or remedial nature. Children who are known or suspected to be victims of sexual abuse would be considered to be in this category.
 - potential handicap: hereditary tendency, congenital problem, birth injury, or other documented high risk factor leading to substantial risk of future disability. Such high risk factors may include, but are not limited to, the following: birth parents' mental illness and/or substance abuse of birth parents, separation trauma due to child's age at removal from birth parents' care, number of substitute placements, etc.
 - sibling status: member of a family group to be placed together.
 - need for placement with known and approved family: Such family would find the child's care an undue financial burden without Adoption Assistance. This includes relatives, other than biological parents, with whom a child has a close attachment, foster parents with whom a child has established a positive psychological bond and emotional tie, or other approved adoptive applicants deemed well suited to meet all but the financial component of the child's needs.
- North Dakota:
- seven years of age or older (five years of age prior to August 1, 2003);
 - physical, emotional, or mental disability or has been diagnosed by a licensed physician to be at high risk for such a disability;
 - member of a minority race; or
 - member of a sibling group
- Ohio
- membership in an ethnic or minority group;
 - age;
 - membership in a sibling group;
 - factors such as medical conditions or physical, mental, developmental or emotional disabilities;
 - emotional dependency upon foster parents;
 - factors in the child's medical history or background or the medical history background of the child's biological family place the child at risk to acquire a medical condition, a physical, mental or developmental disability or an emotional disorder;
 - disruption of an adoptive placement prior to the final decree of adoption which makes the child difficult to place with another adoptive family; or
 - remaining in the permanent custody of a PCSA or PCPA for more than one

year without being placed for adoption in spite of a plan of adoption for the child and reasonable efforts documented by the PCSA or PCPA to place the child for adoption.

- Oklahoma:
- physical disability: a condition which requires regular treatment with a specific diagnosis given by the child's physician;
 - mental disability: the child must meet the eligibility criteria for educable multi-handicapped (EMH) or trainable multi-handicapped (TMH) classes and has been evaluated by a licensed psychologist, psychometrist, school, or recognized diagnostic center. A child with a demonstrable need for intensive adult supervision beyond ordinary age needs also qualifies;
 - age: if no other special needs criteria are met, child must be eight years of age or older. There is no age requirement for a child placed with a relative(s) who provides paid or non-paid kinship care and who meets the specified degree of relationship as defined in OAC 340:10-9-1;
 - sibling relationship: two siblings of any age may qualify without any additional conditions;
 - emotional disturbance: must be (i) established by a physician, psychologist, behavioral therapist, or social worker; (ii) corroborated by a Child Welfare worker's observations of the child's behavior; (iii) corroborated by one or more caregiver such as a foster parent, Head Start or school personnel, church nursery, or child care provider; and (iv) documented with a specific diagnosis and prognosis, if applicable.
 - racial or ethnic factor: Indian, Hispanic, Oriental, and African-American children age three years or older; or
 - high risk of physical or mental disease: Indicators are: (i)– social and medical histories of biological parents and family; (ii) events or life experiences such as severe sexual abuse; and (iii) prenatal exposure to drugs and alcohol.
- Oregon:
- documented medical, physical, emotional condition or other clinically diagnosed disability or documented history of abuse or neglect or other identified predisposing factor that places the child at risk for future problems and need for treatment;
 - member of a sibling group which will be placed together and is difficult to place because there are three or more children, or if in a sibling group of two, at least one of the children is six years of age or older;
 - member of an ethnic/racial/cultural minority (i.e. African American, Hispanic, Asian, Indian, Pacific Islander);
 - eight years of age or older; or
 - significant emotional ties with the prospective adoptive parents while in their care as a foster child (or relative placement), and the family needs financial and/or medical assistance in order to rear the child.
- Pennsylvania:
- physical, mental, or emotional condition or handicap;
 - genetic condition which indicates a high risk of developing a disease or handicap;
 - member of a minority group;
 - member of a sibling group; or
 - five years of age or older
- Rhode Island:
- irreversible physical, emotional, or mental handicap;
 - physical, emotional, or mental handicap which is correctable through surgery, treatment, or other specialized care;
 - member of a cultural or racial minority;
 - above the age of 12;
 - member of a sibling group that will be placed together in an adoptive home; or

- resides with a foster family who cannot adopt without subsidy, and the Department has determined that it would be in the child's best interest to remain with the family.
- South Carolina:
 - white child 10 years old or older;
 - black or mixed-race child six years or older;
 - physically, mentally, or emotionally handicapped child or a child at risk for physical, mental, or emotional handicaps;
 - member of a white sibling group of three or more children placed together, one of whom is at least six years of age, or a sibling group of four or more white children of any age placed together;
 - member of a black or mixed-race sibling group of two or more children placed together, one of whom is at least six years of age, or a sibling group of three or more black or mixed-race children of any age placed together; or
 - member of a sibling group of two or more children placed together, one of whom is a special needs child.
- South Dakota:
 - age, race, or religion;
 - physical, emotional, neurological, or intellectual handicap or problem;
 - sibling group that needs to be placed together;
 - needing a prosthesis, extensive ongoing or anticipated medical care, or therapy for speech, physical, or psychological problems; or
 - adoption by the foster parents with whom the child is living is the only appropriate plan
- Tennessee:
 - Caucasian age nine and above;
 - minority heritage, age five and above;
 - severe physical or psychological handicap as diagnosed by a licensed physician, psychologist, or licensed clinical social worker;
 - sibling groups of three or more who are placed together for the purpose of adoption at the same time;
 - HIV positive;
 - life experiences include neglect (which rises to the level of severe child abuse as defined in T.C.A. 37-1-102 (b) (21)), physical abuse and/or sexual abuse.
- Texas:
 - at least six years old;
 - at least two years old and a member of a minority group that traditionally creates a barrier to adoption;
 - being adopted with a sibling or to join a sibling; or
 - verifiable physical, mental, or emotional handicapping condition, as established by an appropriately qualified professional through a diagnosis that address what the condition is and that the condition is handicapping.
- Utah:
 - five years of age or older;
 - physical, emotional, or mental handicap; or
 - part of a sibling group
- Vermont:

a specific factor or condition which makes it reasonable to conclude that the child cannot be placed with adoptive parents without providing assistance, including:

 - race or ethnic background;
 - age;
 - membership in a sibling group; or
- Virginia:
 - factors such as medical conditions or physical, mental, or emotional handicaps
 - physical, mental, or emotional condition existing prior to adoption;
 - hereditary tendency, congenital problem or birth injury leading to substantial risk of future disability;
 - age of six years or older;
 - minority or mixed racial heritage;

- membership in a sibling group that should not be separated; or
 - development of a meaningful relationship with foster parents with whom the child has resided.
- Washington:
- minority ethnic background;
 - six years of age or older at the time of application for adoption support;
 - member of a sibling group of three or more or of a sibling group in which one or more siblings meets the definition of special needs;
 - diagnosed with a physical, mental, developmental, cognitive or emotional disability; or
 - at risk for a diagnosis of a physical, mental, developmental, cognitive or emotional disability due to prenatal exposure to toxins, a history of serious abuse or neglect, or genetic history
- West Virginia:
- established emotional ties with prospective adoptive parents while in their care for a minimum of 18 months; or
 - not likely to be adopted by reason of one or more of the following conditions:
 - physical or emotional disability;
 - emotionally disturbed;
 - older children;
 - part of a sibling group; or
 - member of a racial or ethnic minority; or
 - appear healthy and of normal development but prognosis is guarded due to incest, mental illness or retardation of parent, drug use by parent, venereal disease of parent, or other impediments to adoption, such as long-term alternative care, or social or genetic complications in their family background
- Wisconsin:
- ten years of age or older (if age is the only factor in determining eligibility);
 - member of a sibling group of three or more children that must be placed together;
 - special need characteristics judged to be moderate or intensive under difficulty-of-care schedules;
 - minority race, and children of that race cannot be readily placed due to a lack of appropriate placement resources; or
 - at risk of developing special care needs due to poor prenatal care, a lack of medical or genetic information about the birth parent(s), a birth family medical history indicating a risk for future health problems, or a social history background with certain risk factors
- Wyoming:
- irreversible or non-correctable physical or mental disabilities;
 - physical, mental, or emotional disabilities correctable through surgery, treatment, or other specialized services;
 - six years of age or older;
 - same foster family home for a lengthy period of time and emotional ties have developed;
 - racial minority; or
 - member of a sibling group needing to be placed in the same home as the siblings